

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO**

Art of Beauty, Inc.,)	Case No.
)	
Plaintiff,)	Judge
)	
vs.)	
)	Jury Trial Demanded
Lights Lacquer, LLC)	
)	
Defendants.)	

COMPLAINT

For its complaint against defendant Lights Lacquer, LLC (“Lights Lacquer”), plaintiff Art of Beauty, Inc. (“Art of Beauty”) states:

Summary of Case

1. This is an action under Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a); the Ohio Deceptive Trade Practices Act, R.C. § 4165; common law trademark infringement; common law unfair competition; and unjust enrichment seeking damages and injunctive relief to remedy Lights Lacquer’s infringement of Art of Beauty’s marks in connection with nail polish products.

2. Founded by two refugees to the United States in the 1980s, Art of Beauty offers high quality beauty products through their Zoya, Qtica, Smart Spa, and Zoom brands. As part of its product offerings, Art of Beauty’s Zoya brand has used women’s names as trademarks associated with various colors for over 15 years.

3. Lights Lacquer is a competitor of Art of Beauty in the field of beauty products.

4. In August, 2022, Art of Beauty became aware that Lights Lacquer started offering nail polish products using identical or confusingly similar names to those used by Art of Beauty in its Zoya nail product line. Art of Beauty sent Lights Lacquer a cease and desist letter seeking

to resolve this dispute amicably and without the intervention of this Court, but Lights Lacquer ignored that communication and follow-up efforts.

5. Accordingly, Art of Beauty seeks to enjoin Lights Lacquer from engaging in further acts of infringement and to obtain monetary relief for the harm Art of Beauty has caused.

Parties

6. Art of Beauty is an Ohio corporation with a principal place of business in Bedford, Ohio.

7. Upon information and belief, Lights Lacquer is a Florida limited liability company with a principal place of business at 2230 NW 17th Avenue, Homestead, Florida 33030.

Jurisdiction and Venue

8. This Court has subject matter jurisdiction over Art of Beauty's claims under 28 U.S.C. §§ 1331 and 1337 because it asserts a federal question under the Lanham Act and the other claims are so related to the other claims in the action that they form part of the same claim or controversy. The Court also has jurisdiction under 28 U.S.C. § 1332 because the dispute is between citizens from two different states and the amount in controversy exceeds \$75,000.

9. This Court also has personal jurisdiction over Lights Lacquer at least because among other things, Lights Lacquer does business in Ohio and offers for sale competing products related to Lights Lacquer's tortious conduct in Ohio and to Ohio businesses or individuals. By targeting customers in Ohio and Art of Beauty, Lights Lacquer is intentionally causing tortious harm to Art of Beauty in Ohio; upon information and belief, Lights Lacquer has sold products in Ohio and to Ohio businesses or individuals.

10. Venue is proper under 28 U.S.C. § 1331 because Lights Lacquer is subject to personal jurisdiction in this district.

Relevant Facts

11. Art of Beauty is a leader in providing high quality beauty products through their Zoya, Qtica, Smart Spa, and Zoom brands. Art of Beauty sells its products online and to salons across the country.

12. One such line of products under the Zoya brand are nail polishes bearing female names. Zoya has offered nail polishes bearing these names for over 15 years.

13. Lights Lacquer is a competitor to Art of Beauty and sells its nail polish online to customers across the United States.

14. In August, 2022, Art of Beauty became aware that a competitor, Lights Lacquer, offers at least 15 nail polishes bearing identical or confusingly similar names. Some of the Lights Lacquer nail polishes also come in a nearly identical color to the equivalent Zoya offering.

15. For example, Zoya offers “Mia,” a “dusty nude mauve-pink” nail polish. Lights Lacquer’s “mia” is “rich mauve with dusty rose.” The two nail polishes are shown below:

Zoya's Original “Mia” Nail Polish



\$12.00

Mia

4.6667 ****

Mia by Zoya can be best described as a very soft, muted dusty nude mauve-pink in a glossy creme finish. A gentle, natural charming shade for a flattering nude look.

Nail Polish

Item #	ZP244
Color Family:	Pink,
Nude	
Finish:	Cream
Coverage:	2 -
Coat Coverage	
Tone:	Warm

Lights Lacquer's Copy "mia" Nail Polish



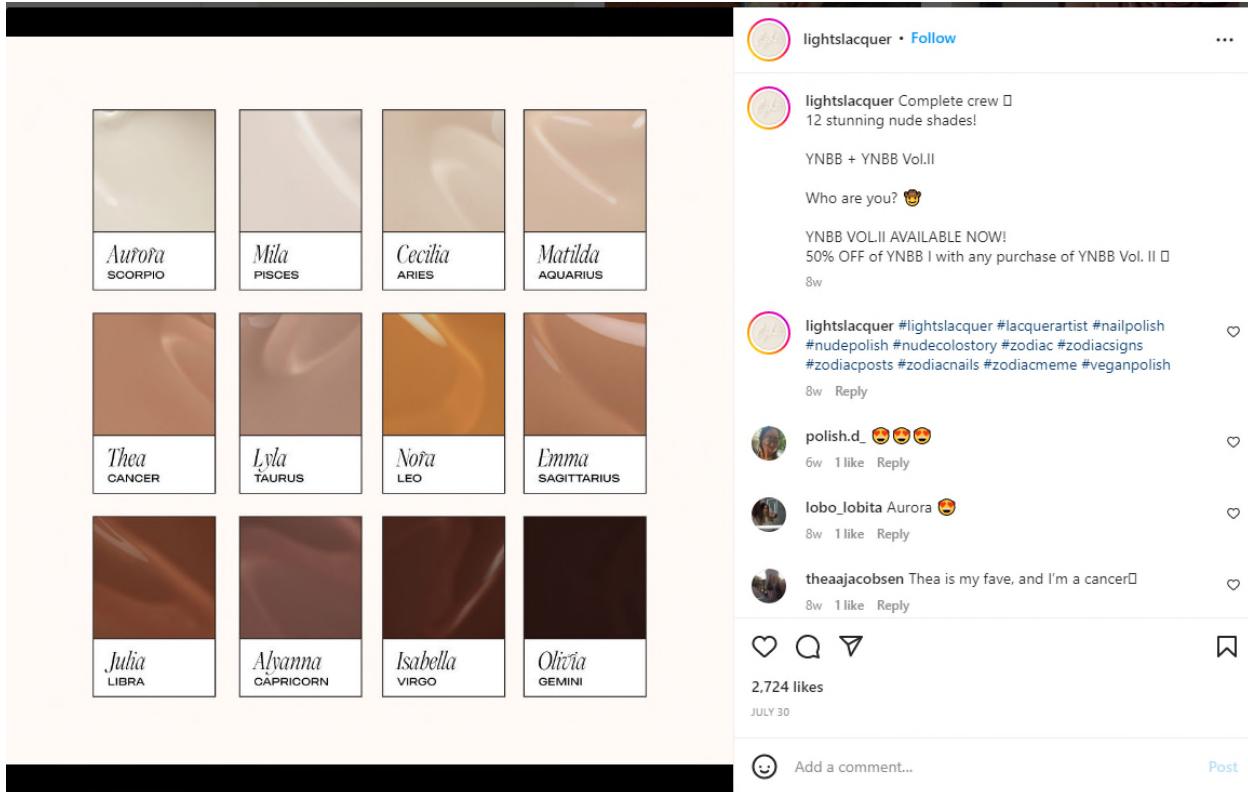
16. Art of Beauty found at least 15 such examples of Lights Lacquer products bearing identical or confusingly similar names to marks Art of Beauty has used in commerce in connection with its nail polishes:

TABLE 1
Art of Beauty's Marks

Lights Lacquer's Infringing Marks	Art of Beauty/Zoya's Senior Marks	Link to Related Art of Beauty/Zoya Product
Zoey	Zooey	https://www.zoya.com/content/item/Zoya-Nail-Polish-in-Zooey.html
Mia	Mia	https://www.zoya.com/content/item/Zoya-Nail-Polish-Mia.html
Lyla	Layla	https://www.zoya.com/content/item/Zoya-Nail-Polish-Layla.html

Adaline	Adeline	https://www.zoya.com/content/item/Zoya-Nail-Polish-in-Adeline-ZP1074.html
Lucy	Lucy	https://www.zoya.com/content/item/Zoya-Nail-Polish-Lucy.html
Jolene	Jolene	https://www.zoya.com/content/item/Zoya-Nail-Polish-Jolene.html
Delilah	Delilah	https://www.zoya.com/content/item/Zoya-Nail-Polish-Delilah.html
Chloe	Chloe	https://www.zoya.com/content/38/item/Zoya/Zoya-Nail-Polish-ZP583-Chloe-Red-Orange-Holographic-Flakes.html
Fiona	Fiona	https://www.zoya.com/content/38/item/Zoya/Zoya-Nail-Polish-Fiona.html
Aurora	Aurora	https://www.zoya.com/content/item/Zoya-Nail-Polish-in-Aurora-ZP646.html
Thea	Thea	https://www.zoya.com/content/item/Zoya-Nail-Polish-in-Thea.html
Julia	Jules	https://www.zoya.com/content/item/Zoya-Nail-Polish-Jules.html
Julia	Julianne	https://www.zoya.com/content/item/Zoya-Nail-Polish-Julianne.html
Cecilia	Cecilia	https://www.zoya.com/content/item/Zoya-Nail-Polish-in-Cecilia.html
Nora	Norra	https://www.zoya.com/content/item/Zoya-Nail-Polish-Norra.html

17. Art of Beauty also discovered that Lights Lacquer operates an Instagram page with the account name “lightslacquer” that advertises and promotes content for purchase and offers “creators” a chance to partner with Lights Lacquer. That account advertises the named products listed above:



18. On August 19, 2022, Art of Beauty sent a cease and desist letter via email and certified mail to Lights Lacquer's President and Founder Kathleen Fuentes. Art of Beauty received no response to that communication.

19. Because of the irreparable harm caused by Lights Lacquer's infringement of Art of Beauty's marks, Art of Beauty was forced to file this lawsuit to enforce its legal rights.

Count I

Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A)

20. Art of Beauty incorporates by reference all allegations in all preceding paragraphs of this complaint as if fully set forth herein.

21. Art of Beauty's marks in connection with its nail polish products and shown in Table 1, above, are valid and legally enforceable.

22. Art of Beauty owns the marks shown in Table 1, above.

23. The Art of Beauty marks shown in Table 1, above, are both distinctive in the marketplace and have otherwise acquired secondary meaning. They identify Art of Beauty's nail polish products and Art of Beauty as the source of those products.

24. Lights Lacquer's use of Art of Beauty's marks in association with its nail polish products violates Section 43(a)(1)(A) of the Lanham Act.

25. Lights Lacquer is using words, terms, or names, specifically names of females, in connection with its national sale of nail polish products that Art of Beauty has been using for over 15 years.

26. The use of those names is likely to cause confusion or mistake as to the affiliation, connection, or association of Lights Lacquer's products with Art of Beauty's products because Art of Beauty has been using those names in commerce for over 15 years.

27. Upon information and belief, Lights Lacquer has obtained substantial sales of goods under and in connection with the nail polishes bearing the Art of Beauty marks listed in Table 1.

28. Art of Beauty has been damaged by Lights Lacquer's infringement.

29. Art of Beauty has suffered irreparable harm due to Lights Lacquer's infringement and will continue to be irreparably harmed unless and until Lights Lacquer is enjoined by this Court.

30. As a direct and proximate result of Lights Lacquer's conduct, Art of Beauty has suffered damages in an amount exceeding \$75,000.

Count II

Deceptive Trade Practices under Ohio Revised Code § 4165.02(3)

31. Art of Beauty incorporates by reference all allegations in all preceding paragraphs of this complaint as if fully set forth herein.

32. Lights Lacquer's use of the Art of Beauty marks listed in Table 1, above, causes a likelihood of confusion or misunderstanding as to the source, sponsorship, approval, or certification of the nail polish goods.

33. Lights Lacquer's use of the Art of Beauty marks constitutes a deceptive trade practice under the Ohio Deceptive Trade Practices Act as defined by Ohio Revised Code § 4165.01 that entitles Psych360 to monetary and injunctive relief under § 4165.03.

34. Art of Beauty has suffered irreparable harm due to Lights Lacquer's false advertising and will continue to be irreparably harmed unless and until Lights Lacquer is enjoined by this Court.

35. As a direct and proximate result of Lights Lacquer's conduct, Art of Beauty has suffered damages in an amount exceeding \$75,000.

Count III
Ohio Common Law Trademark Infringement

36. Art of Beauty incorporates by reference all allegations in all preceding paragraphs of this complaint as if fully set forth herein.

37. By the acts alleged in this complaint, Lights Lacquer has engaged in trademark infringement under Ohio common law.

38. Art of Beauty has suffered irreparable harm due to Lights Lacquer's false advertising and will continue to be irreparably harmed unless and until Lights Lacquer is enjoined by this Court.

39. As a direct and proximate result of Lights Lacquer's conduct, Art of Beauty has suffered damages in an amount exceeding \$75,000.

Count IV
Ohio Common Law Unfair Competition

40. Art of Beauty incorporates by reference all allegations in all preceding paragraphs of this complaint as if fully set forth herein.

41. By the acts alleged in this complaint, Lights Lacquer has engaged in unfair competition in violation of the common law of Ohio.

42. Art of Beauty has suffered irreparable harm due to Lights Lacquer's false advertising and will continue to be irreparably harmed unless and until Lights Lacquer is enjoined by this Court.

43. As a direct and proximate result of Lights Lacquer's conduct, Art of Beauty has suffered damages in an amount exceeding \$75,000.

Count V
Unjust Enrichment

44. Art of Beauty incorporates by reference all allegations in all preceding paragraphs of this complaint as if fully set forth herein.

45. By wrongfully infringing and otherwise using the Art of Beauty marks in Table 1 without Art of Beauty's permission, authorization, or consent, Lights Lacquer has obtained benefits, including sales and goodwill, which rightfully belong to Art of Beauty.

46. Lights Lacquer has not compensated Art of Beauty for the benefit it wrongfully obtained, despite equity and justice requiring it to do so.

47. Lights Lacquer has unjustly enriched itself by obtaining and retaining the ill-gotten benefits of its infringing activities.

48. Lights Lacquer's receipt of benefits of its infringing activity constitutes unjust enrichment.

49. Art of Beauty has suffered irreparable harm due to Lights Lacquer's false advertising and will continue to be irreparably harmed unless and until Lights Lacquer is enjoined by this Court.

50. As a direct and proximate result of Lights Lacquer's conduct, Art of Beauty has suffered damages in an amount exceeding \$75,000.

Prayer for Relief

WHEREFORE, Art of Beauty prays for judgment against Lights Lacquer as follows:

- (A) Finding that Lights Lacquer violated Section 43(a) by offering the goods and services using confusingly similar names to products offered by Art of Beauty;
- (B) Finding that Lights Lacquer engaged in Deceptive Trade Practices under R.C. § 4165.02(3);
- (C) Finding that Lights Lacquer infringed Art of Beauty's trademarks under Ohio Common Law;
- (D) Finding that Lights Lacquer engaged in unfair competition under Ohio Common Law;
- (E) Finding that Lights Lacquer was unjustly enriched when it infringed Art of Beauty's trademarks.
- (F) Preliminary and permanent injunctive relief enjoining Lights Lacquer, its officers, directors, managers, employees, affiliates, agents, representatives, parents, subsidiaries, successors, assigns, those in privity with them, and all others aiding, abetting, or acting in concert or active participation therewith, from infringing Art of Beauty's trademarks in connection with Lights Lacquer's nail polish products;
- (G) Awarding Art of Beauty damages caused by Lights Lacquer's conduct under state and federal law, including 15 U.S.C. § 1117, in an amount exceeding \$75,000.
- (H) Awarding Art of Beauty its costs, attorneys' fees, investigatory fees, and expenses to the full extent provided under 15 U.S.C. § 1117;
- (I) Awarding Art of Beauty pre-judgment and post-judgment interest;
- (J) Awarding Art of Beauty any other actual and punitive damages to which Art of Beauty is entitled under applicable federal and state laws; and

(K) Such other and further relief as allowed at law or in equity that the Court deems to be appropriate, just, and proper.

Dated: September 27, 2022

s/ David B. Cupar

David B. Cupar (0071622)

Andrew D. Gordon-Seifert (0092499)

MCDONALD HOPKINS LLC

600 Superior Avenue, East, Ste. 2100

Cleveland, Ohio 44114

t 216.348.5400 | f 216.348.5474

dcupar@mcdonaldhopkins.com

agordon-seifert@mcdonaldhopkins.com

Counsel for Art of Beauty, Inc.

Jury Demand

Plaintiff Art of Beauty, Inc. hereby demands a jury trial for all issues so triable.

Dated: September 27, 2022

s/ David B. Cupar
David B. Cupar
Andrew D. Gordon-Seifert
MCDONALD HOPKINS LLC
600 Superior Avenue, East, Ste. 2100
Cleveland, Ohio 44114
t 216.348.5400 | f 216.348.5474
dcupar@mcdonaldhopkins.com
agordon-seifert@mcdonaldhopkins.com

Counsel for Art of Beauty, Inc.